IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.28639 of 2019

Smt.Hajara Mariyam Seyed ...Petitioner

Vs.

1.The Additional Commissioner of Customs
(Adjudication – Air),
Anna International Airport,
Meenambakkam, Chennai - 600027

2.The Commissioner of Customs (Appeals)
No.60, Rajaji Salai, Custom House
Chennai - 600001

3.Principal Commissioner (R.A.) Ex-Officio,
Additional Secretary Government of India
8th Floor, World Trade Centre,
Cuffe Parade, Mumbai – 400005 ...Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of certiorarified mandamus calling for the records of the Order passed by the 3rd Respondent in F.No. 373/ 58/ B/ 17/ RA/ 1372 Order No. 625/ 2018-Cus(Z)/ Asra/ Mumbai dated 14.08.2018 and quash the same and to cancel/ modify/ reduce the redemption fine and personal penalty as that may be considered just and proper and reasonable and consequently to order for the refund of the excess amount paid towards fine and penalty.

For Petitioner : Mr.M.Abdul Nazeer
For Respondents : Mr.V.Sundareswaran, Senior Panel Counsel

ORDER

The petitioner had been intercepted on her arrival in the Chennai International Airport on 06.01.2016, on the suspicion that she was smuggling gold. The petitioner is a resident of Dubai for the last 23 years.

2. Upon inspection of her person, the authorities found three gold chains and two gold bangles weighing 732.5 grams. Nine gold bars weighing 1048.5 grams had been wrapped in a brown colour rexin sheet and taped with transparent cellophane tape onto her inner garments.

3. The petitioner had not made any declaration or sought permission for the import of the gold. The gold was thus, confiscated and a show cause notice had been issued culminating in an order-in-original dated 25.11.2016. The gold valued at a sum of Rs.46,05,666/- had been confiscated in terms of Section 111(d) and (1) of the Customs Act, 1962 (in short 'Act') read with Foreign Trade (Development and Regulation) Act, 1992. A penalty of Rs.4,60,000/- had been imposed under Section 112 (a) of the Act.

4. The petitioner appealed before the first Appellate Authority and by order dated 20.02.2017 her appeal was dismissed. The petitioner's attempt to

state that the statement recorded from her, on the basis of which she has been searched and the gold found, had been recorded under pressure or duress was rejected as the first Appellate Authority was of the view that entirety of the statement had been supported by the recovery of the gold from her person. The retraction was thus of no value and there was also nothing to indicate that the statement had been recorded under pressure or duress.

5. As against the aforesaid order of the first Appellate Authority, a revision had been filed before the Central Government in terms of section 129DD of the Act that had come to be rejected by way of the present impugned order dated 27.08.2018.

6. The Authorities have been more than liberal in deciding the revision application. While confirming the facts in question, the Government has set aside the confiscation of the gold and has permitted redemption for re-export on payment of redemption fine of Rs.20,00,00/- under Section 125 of the Act. The penalty imposed has also been reduced to a sum of Rs.4,00,000/- and the penalty of a sum of Rs.10,000/-, under Section 114AA, was set aside.

7. No justification is made out for intervention in the impugned order and, in fact, learned counsel for the petitioner, fairly, restricts his plea to

leniency. In light of the fact that the petitioner has, admittedly, brought in gold without either a declaration or a permit, there is no avenue to intervene in the impugned order, particularly seeing as the order is discretionary one and no error, much less perversity, is made out in the same.

8. Mr.V.Sundareswaran, learned Senior Panel Counsel would make an attempt to state that the only reasons that the impugned order was not challenged by the revenue by way of appeal, was the restriction of monetary limit.

9. This submission runs counter to the averment in the counter affidavit filed by respondents 1 and 3 dated 20.06.2020, wherein at para 21, they strenuously support with the conclusion of the revisional authority in the impugned order.

10. In light of the discussion as above, there is no merit in this writ petition. The impugned order is confirmed and this writ petition is dismissed. No costs.

Ska **01.11.2022**

Index : Yes
Speaking Order

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DR.ANITA SUMANTH,J.

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